

being unpatentable over DiPoto et al. Finally, claims 8, 24-28, 30 and 32 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kudo et al.

With respect to the rejections of claims 1-32 under 35 USC §112, first paragraph, Applicants respectfully submit that the amendments thereto overcome the rejections. More specifically, claims 1 and 23 have been amended to define that the blend of low density polyethylene and polyethylene plastomer has a density of from about 0.89 g/cc to 0.93 g/cc. Further, claims 1, 23, and 24-25 have been amended to remove the limitation that the film structure is oriented. Further, claim 27 has been amended to define that the third layer is disposed between the first and the second layers. Claims 1 and 32 have been amended to define that the plastomer or polyethylene is a polyethylene plastomer, as defined in the specification. Claims 30 and 31 have been cancelled, so the rejection thereto under 35 USC §112, first paragraph, is moot.

With respect to the rejections of the claims 12-14 under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention, Applicants have amended claim 12 to define that the second layer "blend" has a density of about 0.90 g/cc to about 0.925 g/cc, rather than the second layer. Applicants respectfully submit that the amendment overcomes the rejection.

With respect to the rejection of claim 31 under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention, Applicants respectfully submit that the rejection is now moot, as claim 31 has been cancelled from the present application.

With respect to the rejection of the claims under 35 USC §102(b) as being anticipated by Bader et al. and Kudo et al., respectively, Applicants respectfully submit that the amendments overcome the specified rejections. More specifically, claims 1, 23-25 and 32 have been amended to define that the first layer of the multilayer film structure (claims 1 and 32) or the multilayer film structure (claims 23-25) is laminated to a film that comprises a polymeric material selected from the group consisting of oriented PET, oriented polypropylene, oriented polyethylene, oriented nylon, and coated or uncoated cellophane. These features are neither disclosed nor taught in Bader et al. or Kudo et al.

More specifically, Bader et al. merely teaches a three layer metallizable film structure having a flame or corona discharge treated upper skin layer that is metallized. The upper skin layer further comprises ethylene-propylene-butene-1 terpolymer and low density polyethylene, very low density polyethylene, and linear low density polyethylene. The base layer comprises an imbalanced biaxially oriented film of HDPE. The lower skin layer can comprise a random ethylene-propylene copolymer. However, nowhere does Bader et al. teach or disclose the features of Applicants' present claimed invention.

In addition, Kudo et al. merely teaches a resin laminate having a heat sealable layer, a polyolefinic resin layer, and a base film. The heat sealable layer is composed of a layer of a random copolymer obtainable by copolymerizing ethylene with an alpha olefin. Further, the heat sealable layer contains a low-crystalline or non-crystalline ethylene alpha-olefin, such as ethylene-propylene rubber, ethylene-propylene diene rubber, and low crystallinity ethylene-butene-1 copolymer. The polyolefinic resin layer is composed of a layer of a polyolefinic resin. The surface of the polyolefinic resin layer is oxidation treated, such as via corona

discharge treatment, flame treatment, hot-air treatment, treatment with ozone or ultraviolet rays, or surface abrasion treated, via sand blasting.

However, nowhere does Bader et al. or Kudo et al. teach a multilayer film structure according to the present invention. More specifically, Bader et al. fails to teach a multilayer structure having at least two layers wherein a first layer comprises polyethylene or blended polyethylene wherein said first layer polyethylene is selected from polyethylenes having a density from about 0.93 g/cc to 0.97 g/cc; a second layer comprises a blend of low density polyethylene and a polyethylene plastomer wherein the blend has a density range from about 0.89 g/cc to 0.93 g/cc and wherein the second layer is capable of forming a heat seal; and wherein the first layer is laminated to a film that comprises a polymeric material selected from the group consisting of oriented PET, oriented PP, oriented PE, oriented nylon and coated or uncoated cellophane.

The combination of the first layer of the polyethylene or blended polyethylene having a density of from about 0.93 g/cc to about 0.97 g/cc with a layer of a blend of polyethylene and a polyethylene plastomer having a density range of about 0.89 g/cc to about 0.93 g/cc allows a film structure to be produced having rigidity when solidified and good flowability when heated so that the film has quick-setting seal properties but is easily torn via pull-apart forces. In addition, the oriented PET, PP, PE, nylon or cellophane laminate provides further rigidity and structural integrity so that packages may be produced therefrom having adequate moisture and oxygen barrier properties and flex crack resistance. The oriented PET, PP, PE, nylon or cellophane is typically an outer printed layer for a package that may hold flowable products,

such as for condiments like catsup, mustard or other flowable products. These features are nowhere taught nor even disclosed in Bader et al. or Kudo et al.

Under 35 USC §102(b), anticipation requires that a single prior art reference must disclose each and every element of Applicants' claimed invention. *Akzo N.V. v. U.S. International Trade Commission*, 808 F.2d 1471,1479, 1 USPQ 2d. 1241, 1245 (Fed. Cir. 1986). Moreover, anticipation is not shown even if the differences between the claims and the prior art are "insubstantial" and one skilled in the art could supply the missing elements. *Structure Rubber Products Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 USPQ 1264, 1270 (Fed. Cir. 1984). Since both Bader et al. and Kudo et al. fail to disclose each and every element defined in the amended claims, the rejections have been overcome and should be withdrawn.

With respect to the rejection of the claims under 35 USC §103(a) as being unpatentable over DiPoto et al., Applicants respectfully submit that the claims as amended distinctly define the present invention from DiPoto et al. and any of the other art of record for the reasons that follow.

More specifically, DiPoto et al. merely teach a multilayer film structure comprising two or more layers having a first layer of a barrier material and a second layer of a heat sealable material that is compression roll oriented. However, nowhere does DiPoto et al. teach a multilayer film structure having a first layer of a polyethylene or blended polyethylene having a density of about 0.93 g/cc to about 0.97 g/cc, a second layer of a blend of polyethylene and a polyethylene plastomer having a density range from about 0.89 g/cc to about 0.93 g/cc, wherein said first layer is laminated to a film wherein said film comprises a polymeric material

selected from the group consisting of oriented PET, oriented PP, oriented PE, oriented nylon, or cellophane.

As stated above, the combination of features of the present invention provides for a package that may have both rigidity when solidified, yet has flowability when heated so that the package produced thereby is easily torn using pull apart forces but has quick setting properties when heated. In addition, the oriented PET, PP, PE, nylon or cellophane laminate provides for a film that has increased rigidity and structural integrity so that package may have sufficient moisture and oxygen barrier properties and flex crack resistance. The oriented PET, PP, PE, nylon or cellophane film is typically an outer printed layer or layers for a package that may hold flowable products, such as for condiments like catsup, mustard or other flowable products. These features are nowhere taught nor even disclosed in Bader et al. or Kudo et al. Since the patent office has failed to establish a *prima facie* case of obviousness, the rejection of the claims under 35 USC §103(a) is improper and should be withdrawn.

Claims 2-12, 14, 16-22, 26-29, and 31 depend from independent claim 1. These claims are further believed allowable over the references of record for the same reasons set forth with respect to their parent claim because each sets forth additional structural elements of Applicants' novel film structure.

Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attached page is captioned "Version with Markings to Show Changes Made." In addition, a clean version of the claims is attached hereto as well, captioned "Marked Up Version to Show Changes."

CONCLUSION

In view of the foregoing remarks and amendments, Applicants respectfully submit that all of the claims are in allowable form and that the application is now in condition for allowance. If, however, any outstanding issues remain, Applicants urge the Examiner to telephone Applicants' attorney so that the same may be resolved and the application expedited to issue. Applicants respectfully request the Examiner to indicate all claims as allowable and to pass the application to issue.

Respectfully submitted,

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**MARKED UP VERSION TO SHOW CHANGES**

Please amend the claims as follows:

1. (Amended) A multilayer film structure having at least two layers comprising:
  - (a) A first layer comprising poly(ethylene) or blended poly(ethylene) wherein said first layer poly(ethylene) is selected from poly(ethylenes) having a density from about 0.93 g/cc to 0.97 g/cc; and
  - (b) A second layer comprising a blend of low density polyethylene and a polyethylene plastomer wherein said [second layer] blend has a density range from about 0.89 g/cc to 0.93 g/cc and wherein said second layer is capable of forming a heat seal,  
  
[wherein said multilayer film structure has orientation in the machine direction]  
  
wherein said first layer is laminated to a film wherein said film comprises a polymeric material selected from the group consisting of oriented PET, oriented polypropylene, oriented polyethylene, oriented nylon, and coated or uncoated cellophane.
12. (Amended) The multilayer film of claim 1 wherein said [second layer poly(ethylene) is selected from polyethylenes having] blend has a density from about 0.90 g/cc to about 0.925 g/cc.
14. (Amended) The multilayer film of claim [13] 1 wherein said polyethylene plastomer has a density of about .911 g/cc and said LDPE has a density of about .921 g/cc.
18. (Amended) The multilayer film of claim [17] 1 wherein the oriented PET is coated with a barrier resin.

19. (Amended) The multilayer film of claim [17] 1 wherein the oriented polypropylene is coated with a barrier resin.

20. (Amended) The multilayer film of claim [17] 1 wherein the oriented nylon is coated with a barrier resin.

23. (Amended) A method of making a package comprising:

(1) providing a multilayer film having:

(a) A first layer comprising a poly(ethylene) or a blended poly(ethylene) wherein said first layer poly(ethylene) is selected from poly(ethylenes) having a density from about 0.93 g/cc to about 0.97 g/cc;

(b) A second layer comprising a blend of low density polyethylene and a polyethylene plastomer wherein said [second layer] blend has a density range from about 0.89 g/cc to about 0.93 g/cc and wherein said second layer is capable of forming a heat seal[,

wherein said multilayer film has orientation in the machine direction]; and

(2) laminating said multilayer film structure to another film structure [or a packaging component] to form a package wherein said other film structure comprises a polymeric material selected from the group consisting of oriented PET, oriented polypropylene, oriented polyethylene, oriented nylon, and coated or uncoated cellophane.

24. (Amended) A method of making a package comprising: (1) providing a multilayer film having:



- (a) A first layer comprising poly(ethylene) or a blended poly(ethylene) wherein said poly(ethylene) has a density range from about 0.93 g/cc to 0.97 g/cc and wherein said first layer may optionally contain a color pigment and/or filler;
  - (b) A second layer comprising poly(ethylene) or a blended poly(ethylene) wherein said poly(ethylene) has a density range from about 0.93 g/cc to 0.97 g/cc and wherein said second layer may optionally contain a color pigment and/or a filler; and
  - (c) A third layer comprising poly(ethylene) or a blended poly(ethylene) wherein said poly(ethylene) has a density range from about 0.89 g/cc to 0.93 g/cc and wherein said third layer is capable of forming a heat seal[, wherein said multilayer film has orientation in the machine direction]; and
- (2) laminating said multilayer film structure to another film structure [or a packaging component] to form a package wherein said other film structure comprises a polymeric material selected from the group consisting of oriented PET, oriented polypropylene, oriented polyethylene, oriented nylon, and coated or uncoated cellophane.

25. (Amended) A package for flowable material comprising:

- (1) a first multilayer film structure comprising: (a) a first layer comprising poly(ethylene) or a blended poly(ethylene) wherein said poly(ethylene) has a density range from about 0.93 g/cc to 0.97 g/cc and wherein said first layer may optionally contain a color pigment, and/or a filler; (b) a second layer comprising poly(ethylene) or a blended poly(ethylene) wherein said poly(ethylene) has a density range from about 0.93 g/cc to 0.97 g/cc and wherein said second layer may optionally contain a color pigment and/or a filler; and

(c) a third layer comprising poly(ethylene) or a blended poly(ethylene) wherein said poly(ethylene) has a density range from about 0.89 g/cc to 0.93 g/cc and wherein said third layer is capable of forming a heat seal [and further wherein the first multilayer film structure has orientation in the machine direction]; and

(2) at least one other film structure capable of being laminated to said first multilayer film structure wherein said other film structure comprises a polymeric material selected from the group consisting of oriented PET, oriented polypropylene, oriented polyethylene, oriented nylon, and coated or uncoated cellophane.

27. (Amended) The multilayer film of claim 26 wherein the [second] third layer is disposed between and in contact with the first layer and the [third] second layer.

32. (Amended) A multilayer film structure comprising:

a first layer comprising a blend of a first poly(ethylene) having a density of about 0.960 g/cc wherein the first poly(ethylene) comprises about 80% of the first film layer, and a colorant;

a second layer comprising a blend of a second poly(ethylene) having a density of about 0.960 g/cc wherein the second poly(ethylene) comprises about 75% of the second film layer, and a colorant; and

a third layer comprising a blend of a third poly(ethylene) having a density of about 0.921 g/cc wherein the third poly(ethylene) comprises about 65% of the third film layer, and a fourth poly(ethylene) having a density of about 0.911 g/cc wherein the fourth poly(ethylene) comprises about 30% of the third film layer;

wherein the first layer has a thickness of about 0.15 mils, the second layer has a thickness of about 0.90 mils, and the third layer has a thickness of about 0.45 mils and further wherein the film structure has a total thickness of about 1.5 mils; and

wherein said first layer is laminated to a film wherein said film comprises a polymeric material selected from the group consisting of oriented PET, oriented polypropylene, oriented polyethylene, oriented nylon, and coated or uncoated cellophane.

Please cancel claims 13, 15-17, 30-31, 33 and 34.

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